BEFORE
EDWIN H. BENN
ARBITRATOR

In the Matter of the Arbitration

between

VILLAGE OF LANSING, ILLINOIS

and

FRATERNAL ORDER OF POLICE LODGE 218, ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL

CASE NOS.: S-MA-04-240
Arb. Ref. 06.385
(Interest Arbitration)

OPINION AND AWARD

APPEARANCES**:**

For the Village:	James Baird, Esq. Kathryn S. Clark, Esq.
For the Union:	Gary L. Bailey, Esq.

Dates of Hearing:	February 5 and 28, 2007
Dates Briefs Received:	May 29, 2007 (Village); May 31, 2007 (Union)
Date of Award:	July 19, 2007

CONTENTS

I. BACKGROUND

This is an interest arbitration under authority of Section 14 of the Illinois Public Labor Relations Act ("Act").[1]

Since February 1988, the Fraternal Order of Police Lodge 218, Illinois Fraternal Order of Police Labor Council ("Union" or "Council") has represented all full-time sworn peace officers below the rank of sergeant employed by the Village of Lansing, Illinois ("Village" or "Lansing").[2] The most recent collective bargaining agreement between the parties ("Agreement") was effective from May 1, 2001 through April 30, 2005.[3] There are approximately 45 officers in the bargaining unit.[4]

There are approximately 23 members in the Firefighters bargaining unit represented by IAFF Local 3709 and an additional 40 paid-on-call employees in the Fire Department represented by the Paid-On-Call Firefighters Union.[5] IUOE Local 150 represents approximately 51 employees in the Village's Public Works Department.[6] The Village and IUOE Local 150 are negotiating an initial collective bargaining agreement.[7]

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1 5 ILCS 315/14. The parties did not waive the tri-partite panel called for in Section 14 of the Act. Joint Exh. 1 at par. 1.

2 Union Exh. 2; Joint Exh. 3 at Section 1.1; Village Exh. Book II at tabs 1-4. Unless indicated that record references to Village exhibits are from "Village Exh. Book II", Village exhibits referred to in this opinion and award are from Village Exhibit Book I.

3 Joint Exh. 3 at Article XXVIII.

4 The numbers vary. *See* Union Exh. 8; Village Exh. 6; Tr. 188.

5 Village Exh. 6; Village Exh. Book II at tab 9.

6 Village Exh. 6.

7 Tr. 189-190.

The parties were able to agree upon a number of items for the new Agreement.[8] All of the parties' tentative agreements are incorporated into this award and the new Agreement.

The parties agreed that Blue Island, Calumet City, Hazel Crest, Homewood, Midlothian, Oak Forest, Park Forest and South Holland are comparable communities to Lansing.[9]

The parties were not able to agree upon the following issues which will be decided in this proceeding:[10]

A. Duration
B. Residency
C. Grievance Procedure and Discipline
D. Health Insurance
    1. Coverage
    2. Costs
E. Wages
F. Paramedic Stipend

II. THE STATUTORY FACTORS

Section 14(h) of the Act sets forth the factors to be considered in these cases:

> (h) Where there is no agreement between the parties, ... the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
>
> (1) The lawful authority of the employer.
>
> (2) Stipulations of the parties.
>
> (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

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8 *See* Joint Exh. 2.

9 Joint Exh. 1 at par. 7.

10 *See* Supplemental Ground Rules, Joint Exh. 1 at par. 5.

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly known as the cost of living.

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

In reaching the conclusions in this case, all statutory factors have been considered.

III. DISCUSSION

A. Authority For Selection Of Offers

Section 14(g) of the Act provides:

> … As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable factors presented in subsection (h).

Therefore, under the Act, economic issues must be resolved on the basis of selecting one of the final offers made by the parties. Non-economic issues are not necessarily resolved on the basis of the parties' last offers.[11]

B. The Non-Economic Issues (Excluding Insurance Coverage)

The parties have agreed that their differences over duration, residency and the grievance procedure for discipline are non-economic issues.[12]

1. Duration

The Union seeks a three year term for the new Agreement from May 1, 2005 through April 30, 2008.[13] The Village seeks a term "... effective on the first day after it [is] signed by both parties, and shall remain in force and effect until midnight, April 30, 2010."[14]

The Agreement shall expire on April 30, 2009.

This relationship needs stability, which will be given by an April 30, 2009 expiration date. The parties have been in negotiations leading up to this proceeding for an inordinate period of time after the last contract expiration date of April 30, 2005. Over two years have passed since that expiration date. If the Union's April 30, 2008 expiration date is chosen, for all practical purposes the ink will still be wet on this Agreement as the parties begin to prepare and begin negotiations for the next Agreement. As I stated at the hearing, with the Union's proposed April 30, 2008 expiration date "... what the Union is propos-

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[11] In the discussion that follows, I have distinguished the economic from the non-economic issues. *See infra* at III(B) and (C). There is an exception to that differentiation with respect to insurance coverage (a non-economic issue) and insurance costs (an economic issue). *See* Joint Exh. 1 at par. 5. Because insurance coverage and costs are interrelated, both aspects of the parties' insurance proposals are discussed under the analysis of the parties' economic issues, *infra* at III(C)(1), but still distinguishing between coverage (non-economic) and costs (economic).

[12] Joint Exh. 1 at par. 5(a)(1).

[13] Joint Exh. 4(a) at par. 1; Union Brief at 4.

[14] Joint Exh. 4(b) at par. 1(a)(3); Village Brief at 34-37.

ing -- and this happens -- is a contract that will expire and then you'll take a deep breath and you'll be looking at each other again."[15] That result must be avoided.

Further, with the shorter expiration date sought by the Union, the terms imposed by this Agreement will have insufficient time to be in place for the parties to determine whether further changes are needed.[16] The Village points to one of my prior awards in *Village of Algonquin and MAP*, S-MA-95-85 at 34 (1996):[17]

> The purpose of a longer Agreement is to provide stability. From a practical standpoint, the longer Agreement allows the parties to go about their business without having to spend enormous amounts of time and money devoted to negotiations and interest arbitrations.

Although the shorter contract duration was chosen in *Algonquin*, the underlying logic for requiring the element of stability and bringing the negotiation process to an end for a period of time expressed in *Algonquin* is applicable here. These parties need to be away from the bargaining table for awhile.

However, as discussed *infra* at III(C)(1), significant changes sought by the Village have been imposed with respect to insurance coverage and costs and, in very great part, have been imposed because the Firefighters have agreed to those changes in their contract with the Village. If those significant changes prove unworkable from either parties' perspective, then forcing the parties to wait until 2010 to make adjustments will, in my opinion, be too long of a wait. The Village and the Firefighters have agreed to an expiration date of April 30,

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15 Tr. 58.

16 *See e.g.,* the discussion concerning insurance coverage, *infra* at III(C)(1)(d).

17 Village Brief at 35.

2009 for their contract.[18] Given the changes that will take effect as imposed by this award, the expiration date of that internal comparable should also be imposed as the expiration date for this Agreement. The Agreement shall therefore expire April 30, 2009.

The next question is the commencement date of the Agreement. As noted *supra*, the Union seeks a date certain for commencement — May 1, 2005 — while the Village seeks a commencement date "... effective on the first day after it [is] signed by both parties ...."[19]

The May 1, 2005 effective date proposed by the Union is selected.

The duration provisions in Article XXVIII of the prior Agreement had a date certain as an effective date ("This Agreement shall become effective on May 1, 2001 ..."). Having a date certain for the effective date is therefore the *status quo*. In these cases, the burden is on the party seeking to change the *status quo* — which on this issue would place the burden on the Village. The Village's position that some unknown date when the parties get around to signing the Agreement should be the effective date cannot be justified to change the *status quo*. Indeed, having a signing date as opposed to a date certain as the effective date could encourage either party to delay signing the Agreement (depending upon the issue resolved and a desire to delay its application). Again, stability and bringing this dispute to an end are required and that is what a date certain for commencement brings.

There is a sub-issue flowing from the duration issue. There is no dispute that, as a general concept, the parties are in agreement that wages are to be

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[18] Village Exh. Book II at tab 8, Article XXVI ("This Agreement shall be effective as of May 1, 2005, and shall remain in full force and effect until ... April 30, 2009.").

[19] Joint Exh. 4(a) at par. 1; Union Brief at 4; Joint Exh. 4(b) at par. 1(a)(3); Village Brief at 34-37.

retroactive to May 1, 2005.[20] The Union sees its position on retroactivity as one which "... protects retro pay *and benefits* for officers who retire or get promoted out of the bargaining unit before the contract is executed" [emphasis added].[21] The Village's position is that "... wages are made retroactive, but no other benefits are applied retroactively unless otherwise stated in the contract."[22]

Clearly, the parties are in accord that wages are retroactive to May 1, 2005. The outer bounds of retroactivity for employees other than current bargaining unit employees and the extent of retroactive benefits, if any, cannot be decided in this forum. With the exception of the commencement and termination dates imposed by this award (*i.e.*, May 1, 2005 and April 30, 2009) there are no other changes to Article XXVIII. Thus, the question concerning the scope of the retroactivity provision is not answered in this proceeding. That question is not one of contract *formation* (which is resolved in this proceeding), but is a question of contract *interpretation* (which is resolved through a grievance processed under the terms of the grievance procedure). These questions might be hypothetical and, if not hypothetical, the answers may be dependent upon extrinsic evidence such as past practice — *i.e.,* how the parties have treated retroactivity in the past, with specific examples of employees who left the bargaining unit after a contract expired and before a new contract was put into place and how compensation and benefits other than wages were treated for those employees for the periods covered by retroactivity. If those kinds of issues arise after this contract is put into place, the Union can file a grievance

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[20] *See* the parties final offers, Joint Exhs. 4(a) at par. 2; 4(b) at par. 3(b)(3).

[21] Union Brief at 5.

[22] Village Brief at 33; Tr. 255-259.

and the parties can sort the matter out through the orderly processes of the grievance procedure. In short, the question of the extent of retroactivity beyond wages for current employees is a question of contract interpretation — a grievance dispute — and not one of contract formation of the terms of the Agreement. Because this proceeding only addresses the formation of the terms of the Agreement, no opinion can be expressed *in this forum* on retroactivity beyond wages for current employees.

Retroactivity for wages shall be on all hours paid. Retroactive payments shall be made to the employees within 45 days of the date of this award, or to a date agreed upon by the parties or by another date for good cause shown.

The duration of the Agreement shall be from May 1, 2005 to April 30, 2009.

2. Residency

Article XXV of the 2001-2005 Agreement provides:

> **ARTICLE XXV**
>
> **RESIDENCY**
>
> Employees shall be required to reside within the Village of Lansing. If an employee is within 2 years of retirement eligibility, that employee can establish residency outside of the village, provided that such employee signs a written agreement committing to retire within 2 years of moving outside of the Village.
>
> * * *

The Union seeks to relax the residency provisions to allow employees to live within a boundary of Archer Avenue to West 79th Street to Lake Michigan on the north; the Illinois State line and Lake Michigan on the east; US Route 45 on the west; and Beecher/Peotone road to West Governors Highway to Wilmington Road on the South with the further provision that the border would

include any area within the above boundaries and anywhere in the incorporated or unincorporated area of a community that has a portion of its border located within or touching this border, with the exception of the City of Chicago, where the actual border line of the City of Chicago would be used.[23]

The Village also seeks to relax the residency provisions, but not to the extent sought by the Union. The Village proposes that the requirement to reside within the Village shall remain, but if an employee is within three years of retirement eligibility, that employee can establish residency within 12 miles of Village Hall in the State of Illinois, provided that the employee signs a written agreement committing to retire within three years of moving outside of the Village and that effective January 1, 2008 and January 1, 2009, the three year requirement would be relaxed to four years and then five years, respectively.[24]

Under the Act, residency requirements for municipalities such as the Village are the subject of interest arbitration proceedings.[25] The statutory requirement that residency can be resolved through these interest arbitration proceedings nevertheless results in the same principles concerning changes to the *status quo* and application of burdens — specifically, that the burden is on the party seeking the change to demonstrate that the change is necessary.[26]

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[23] *See* Joint Exh 4(a) at par. 7; Union Brief at 13.

[24] *See* Joint Exh. 4(b) at par. 1(a)(2); Village Brief at 13-20.

[25] *See* Section 14(i) of the Act ("In case of peace officers, the arbitration decision shall be limited to wages, hours, and conditions of employment (which may include residency requirements in municipalities with a population under 1,000,000, but those residency requirements shall not allow residency outside of Illinois) ..."). The Village falls under that requirement.

[26] The Union argues that "... interest arbitrators have overwhelmingly shown that preservation of the *status quo* in residency cases has had little appeal in their decision-making." Union Brief at 17. Trying to reconcile the many decisions of the fleet of interest arbitrators is a task I will not undertake. The Act does not instruct interest arbitrators to treat residency different from other issues in that regard. The usual burdens must apply.

The Union is seeking the more significant change in the residency provisions. The Union therefore has the burden to show that the *status quo* must be changed and the existing residency system is broken and in need of repair and that the Village's proposed changes will not make the necessary repairs. In this case, the Union cannot meet that burden.

First, from an internal comparability standpoint, all Village employees are required to reside in the Village.[27]

Second, the Village's residency requirement is made well-known to candidates seeking to become officers and ultimately members of the bargaining unit. Aside from the published ordinance requiring residency in the Village, candidates are informed of the residency requirement in advertisements for positions (including the Village's website); when they receive their applications; during orientation; at the oral interview; and during the background interview.[28] In short, with respect to residency, employees come into their employment relationship with the Village with eyes wide open and in full voluntary acceptance that they have to comply with the residency requirement as a condition of employment.

Third, a demonstration that the current residency system is working with its geographic limits comes from the Village's presentation concerning recruitment and retention of bargaining unit personnel. There is no real showing that substantial numbers of officers have left their positions because of the residency requirement. Officers have resigned, but there has been a steady and

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[27] Village Exh. 70(b) (Ordinance No. 425 — "… all employees, department heads, supervisory and administrative personnel and appointed officers, including, but without limitation thereto, all police officers and firemen, are hereby required to reside within the Village throughout their term of office or length of employment ...."), Village Exh. 75 (for firefighters and paid-on-call firefighters); Tr. 352, 405-406.

[28] Village Exh. 70(b), 71(a)-(e), 72; Tr. 151, 405-406.

increased pick up of applications by prospective candidates.[29] The information offered by the Village also shows that in the recent past, attendance at orientation has increased.[30] Further, as shown by the Village, the number of individuals taking the test has not shown a downward trend.[31] The residency requirement does not appear to be a hindrance to the Village's ability to retain existing officers or to attract prospective officers. Thus, the residency requirement does not need fixing to the extent sought by the Union.

Fourth, there is no evidence that the requirement that officers live in the Village (or, within the extended boundaries permitted for officers who commit to retire within the designated time periods) has placed officers or their families in physical jeopardy as a result of the residency requirement. It is certainly possible that a trip to the grocery store, to a local event or attendance at school, places of worship, etc., could bring officers or their families into contact with individuals the officers have encountered in their role of enforcing the law. But there is no real evidence that such has occurred with adverse conse-

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[29] According to the Village, five officers resigned during the period April 2002 through May 2006 — four moving on to other departments and one to a different career. Village Exh. 74; Tr. 351-352. With respect to recruitment, the Village produced the following information (Village Exh. 73; Tr. 351-352):

Test Date	Picked Up Applications	Came To Orientation	No. at Test	Passed Written	Final Eligibility	Hired
5/19/01	75	n/avail.	14	11	10	6
5/10/03	99	n/avail.	47	15	14	3
6/19/04	59	n/avail.	30	16	13	2
4/30/05	99	n/avail.	47	15	14	6
8/19/06	67	22	20	5	4	1
1/27/07	99	47	36			

[30] Village Exh. 73.

[31] *Id*.

quences that could cause an objective observer to conclude that a change is needed to allow officers to live elsewhere to the extent sought by the Union.[32]

Fifth, the Union's argument that officers are "severely limited in their ability to make choices in the education of their children" is not persuasive or demonstrated.[33] Granted, by expanding the residency boundaries there will be more options for educational opportunities for the officers' children. But, there is nothing to show that the Village's schools are inadequate. Residents of the Village can enroll their children in four elementary schools and two junior high schools.[34] There is one high school — Thornton Fractional South High School ("TFS"). And, the evidence shows that TFS recently spent $40 million on new facilities; offers numerous activities (sports, clubs, etc.); and students graduating from TFS continue their education at a variety of colleges and universities.[35] But the most important consideration with respect to schools is that there is no evidence that officers are leaving employment with the Village in any significant numbers because of perceived inadequate educational opportunities for their children sufficient for a conclusion to be drawn that the residency requirement is broken and in need of repair.[36]

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[32] *See* Tr. 133.

[33] Union Brief at 15-16.

[34] Tr. 130; Union Exh. 14.

[35] Testimony of TFS Principal John Hallberg, Tr. 366-374; Village Exhs. 90(a)-(g).

[36] The Union did present evidence concerning two officers who had children with special needs which the officers believed could not be addressed by schools their children could attend as a result of the existing residency boundaries. *See* Union Exh. 15; Union Brief at 20. One of the recommended special schools was in "… the special education services provided by Westlake to residents of northwestern Indiana." Union Exh. 15, medial letter of February 8, 2006. The Act does not permit an interest arbitrator to order residency outside of Illinois. *See* Section 14(i) ("… those residency requirements shall not allow residency outside of Illinois …"). Individual hardships are bound to exist as a result of any residency requirement. Regrettably, the individual circumstances offered by the Union exist, but they do not tip the balance to show that the residency requirement is so educationally restrictive that the residency system is broken and in need of repair.

Sixth, the Union argues that expanded residency boundaries will permit more opportunities for officers to live in communities with growing real estate markets.[37] But there are 7500 single family homes in the Village; as of February 2007 and there were approximately 214 homes for sale in the Village, ranging in asking price from $74,900 to $565,000; approximately 52 homes in the Village were under contract and pending closing, ranging from $67,900 to $399,900; and, in the year prior to February 2007, approximately 400 homes were sold in the Village, ranging from $35,000 to $295,000.[38] Those numbers cause the Village to correctly observe "... a wide choice of affordable housing is available in Lansing."[39] But again, as with the discussion concerning schools in the Village, there is no evidence that officers are leaving employment with the Village in any significant numbers because of perceived inadequate housing availability sufficient for a conclusion to be drawn that the residency requirement is broken and in need of repair.

Seventh, given the above, the Union's arguments concerning external comparability are insufficient to change the result.[40]

The Village's proposal relaxes the residency requirement, but is a small variant from the *status quo*. The Union's proposal seeks to substantially change the *status quo*. The Union's burden to show that the existing residency requirement (or the modification proposed by the Village) is broken, insufficient or in need of repair has not been carried. Indeed, under the facts in this case,

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37 Union Brief at 16.

38 Tr. 130, 357-358; Union Exh. 14; Village Exhs. 78-80. The statistics on homes for sale, under contract and pending closing and sold come from one realtor. Village Exhs. 78-80.

39 Village Brief at 17.

40 Union Brief at 13-15.

the Union could not carry its burden. The Village's proposal on residency is therefore adopted.[41]

3. Grievance Procedure And Discipline

Articles V, VII and XXII of the 2001-2005 Agreement provide, in relevant part:

> **ARTICLE V**
>
> **MANAGEMENT RIGHTS**
>
> … [T]he Village retains all traditional rights to manage and direct the affairs of the Village … including … the following: … to discipline, suspend and/or discharge non-probationary employees for just cause ….
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> * * *
>
> **ARTICLE VII**
>
> **GRIEVANCE PROCEDURE**
>
> **Section 7.1: Definition**
>
> A "grievance" is defined as a dispute or difference of opinion raised by an employee or the Council against the Village involving an alleged violation or misapplication of an express provision of this Agreement, except that any dispute or difference of opinion concerning the imposition of discipline which is subject to the jurisdiction of the Village of Lansing Board of Fire and Police Commissioners shall not be considered a grievance under this Agreement.
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> * * *
>
> **Section 7.3. Arbitration**
>
> If the grievance is not settled … and the Council wishes to appeal the grievance … the council may refer the grievance to arbitration ….

[41] Although residency is a non-economic item, which allows for formulation of a term different from either party's proposal, there is no demonstrated reason why some boundary on residency other than the parties' proposals should be considered.

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Section 7.4: Limitations on Authority of Arbitrator

> ... The arbitrator shall not in any way limit or interfere with the powers, duties and responsibilities of the ... Village Fire and Police Commission under law and applicable court decision. ....

* * *

ARTICLE XXII

BOARD OF FIRE AND POLICE COMMISSIONERS

> The parties recognize that the Village of Lansing Board of Fire and Police Commissioners has certain statutory authority over employees covered by this Agreement. Nothing in this Agreement is intended to in any way limit, replace, supersede, reduce or diminish that authority.

Thus, under the 2001-2005 Agreement, while the Agreement provides in Article V that the Village can "... discipline, suspend and/or discharge non-probationary employees for just cause ....", discipline is not subject to grievance and arbitration under the Agreement, but is subject to determination by the Village's Board of Fire and Police Commissioners ("Commission").

The Union seeks to change that. The Union proposes that the Agreement be changed to "... allow officers to choose between the grievance procedure and the Commission for the forum in which to resolve disciplinary suspensions and discharges."[42] The Village proposes no change in the existing language.[43]

The Village argues that the *status quo* must be maintained because the Union has not shown that the current system is broken and comparability considerations require that no change be imposed.[44] However, this issue is not an

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42 Joint Exh. 4(a) at par. 6; Union Brief at 26-27.

43 Joint Exh. 4(b) at par. 1(a)(1); Village Brief at 37-41.

44 Village Brief at 38-39.

issue like residency discussed *supra* at III(B)(2) which is subject to the traditional examination of burdens requiring the party seeking the change to demonstrate that the existing condition is broken and in need of repair. Nor is this issue subject to comparability considerations. The resolution of this issue is required by the Act.

Section 8 of the Act provides [emphasis added]:

> **Sec. 8. Grievance Procedure.** The collective bargaining agreement negotiated between the employer and the exclusive representative *shall* contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and *shall* provide for final and binding arbitration of disputes concerning the *administration or interpretation* of the agreement unless mutually agreed otherwise. ...

Given the Union's position that it now seeks to have disciplinary matters resolved through the grievance and arbitration provisions of the Agreement or before the Commission (at the employee's option), and further given that Article V of the Agreement addresses discipline for just cause, the parties no longer "... mutually agree ... otherwise" that discipline for just cause can be excluded from the grievance and arbitration provisions of the Agreement. Arbitration is therefore required by the Act.

This is not an issue of first impression for me. *See City of Springfield and PBPA Unit 5*, S-MA-89-74 (1990) at 4 [footnote omitted]:

> ... [T]he fact that the Union could point to no specific problems with the present system is immaterial. While ordinarily the inability of the party seeking to make the change to demonstrate need for the proposed change carries great weight ... the statutory requirement for inclusion of arbitration supersedes that kind of consideration. ...

See also, City of Highland Park and Teamsters Local Union 714, S-MA-98-219 (1999) at 10-11 [emphasis in original]:

> … According to Section 8 of the Act, there must be an ability to appeal to arbitration over the "administration or interpretation of the agreement" which includes the provisions concerning discipline.
>
> * * *
>
> … But these internal and external comparisons must be weighted against the clear mandate found in Section 8 of the Act that the Agreement "*shall* provide for final and binding arbitration of disputes concerning the *administration or interpretation* of the agreement". By excluding discipline — a provision of the Agreement found in Article 3.1 — from arbitration, I have not "provide[d] for final and binding arbitration of disputes concerning the *administration or interpretation* of the agreement". The City's comparability arguments therefore do not defeat the Union's position.

Granting the Union's proposal to include discipline as part of the grievance and arbitration procedure is not a "breakthrough" as the Village argues.[45] Granting the Union's proposal on discipline is required by the Section 8 of the Act.

The Village also argues that the Union should file charges with the Illinois Labor Relations Board ("ILRB") and, with respect to the Village's proposal because "… [i]t is totally inappropriate for this Arbitrator — in this interest arbitration case — to make an interpretation of first impression concerning mandatory or permissive bargaining subjects under the [Act]."[46]

I do not see this as an issue of "first impression" as far as interest arbitration proceedings are concerned. I have dealt with the issue in this fashion at least twice before (in *Springfield and Highland Park, supra)* and have ruled in

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[45] *Id*. at 40-41.

[46] *Id*. at 40.

that fashion now for some 17 years (*Springfield* was decided in 1990). Moreover, I was not the first arbitrator to so hold.[47]

The Village's argument that because "... the parties have voluntarily agreed to the language in the contract, they may well have converted an otherwise permissive subject of bargaining to a mandatory subject of bargaining" and thus, "... it would be inappropriate for this Arbitrator to preempt ... [the ILRB] by making such a ruling on his own ...." is also not persuasive for this proceeding."[48] In *Springfield, Highland Park, City of Markham and Will County Board*, *supra*, the parties had agreed to dispute resolution language in prior agreements and, nevertheless, in the interest arbitrations, arbitration was imposed in all cases either through expansion of the requirement (*Springfield, Highland Park and City of Markham*) or retention of the requirement (*Will County Board)*.

The language in Section 8 of the Act that "[t]he collective bargaining agreement ... *shall* contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and *shall* provide for final and binding arbitration of disputes concerning the administration or interpretation of the

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[47] *See Springfield, supra* at 3-4, citing *City of Markham and Teamsters Local 726*, S-MA-89-39 (Larney, 1989) at 19 (which adopted a similar approach sought by the Union here "... so as to permit the bargaining unit employee a choice as to which forum he/she prefers to seek redress of his/her claim(s)") and *Will County Board and Sheriff of Will County and AFSCME Local 2961*, S-MA-88-09 (Nathan, 1988) at 54, 64-65 [emphasis in original] where the employer sought to change the grievance procedure which included arbitration to a civil service type system excluding arbitration:

> As we interpret Section 8 of [the Act], unless there is some exclusion mandated by law, or the parties otherwise mutually agree, the Agreement must contain a grievance and arbitration procedure covering *all* disputes concerning its administration or interpretation. Section 8 provides no exceptions.
>
> * * *
>
> The law requires a grievance/arbitration procedure for *all* contract disputes.
>
> * * *
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> ... [A]s we interpret Section 8 of the [Act], absent mutual agreement there is no legal basis to carve out jurisdictional exceptions to the grievance procedure.

[48] Village Brief at 40 and note 27.

agreement unless mutually agreed otherwise" [emphasis added] leaves little to the imagination and, most important, that language leaves me with no discretion.

The Union's proposal on discipline is therefore adopted.[49]

C. The Economic Issues (Including Insurance Coverage)

The parties have agreed that their differences over insurances costs, wages and paramedic stipend are economic.[50] As noted *supra* at note 11, because insurance coverage and costs are closely related (changes in coverage can directly impact costs), the parties' designated non-economic issue concerning insurance coverage will be discussed with the economic insurance costs in this economic section.

1. Health Insurance

a. Existing Language

Article XX of the 2001-2005 Agreement provided:

ARTICLE XX

INSURANCE

Section 20.1: Coverage

> The Village shall make available to non-retired employees substantially similar group health and hospitalization insurance and life insurance coverage and benefits as existed prior to the signing of the Agreement except as amended as follows effective May 1, 2001:

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[49] The Village argues that because the Agreement contains a grievance procedure ending in arbitration of disputes — although not for all matters such as discipline — the requirements of Section 8 of the Act have been met. Village Brief at 40. That position was rejected long ago in *Will County Board, supra*, ("[t]he law requires a grievance/arbitration procedure for *all* contract disputes" [emphasis in original]). Section 8's requirement that the Agreement "… shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise" can have no other meaning.

[50] Joint Exh. 1 at par. 5(b).

(a) the annual deductible shall be one hundred fifty dollars ($150) for single and four hundred fifty dollars ($450) for family; and

(b) the co-insurance shall be eighty percent (80%) paid by the Employer and twenty percent (20%) paid by the employee to a maximum employee out-of-pocket cost of one thousand dollars ($1,000) if the PPO doctors and facilities are used. However, if a doctor or facility not a part of the PPO is used, the co-insurance shall be sixty percent (60%) paid the bye Employer and forty percent (40%) paid by the employee to maximum employee out-of-pocket cost of one thousand dollars ($1,000). The 60/40 percent co-insurance rate does not apply to the dental portion of the plan or to emergencies outside the Village of Lansing geographical area.

Further, the Village shall, to the extent required by law, make available to retired employees the ability to participate in its group insurance program for individual and dependent coverage, with premiums to be paid by the retired employee. Arrangements for reimbursement of premiums to the Village should be made with the Director of Personnel. The Village reserves the right to change insurance carriers or benefit levels, to self-insure, or to participate in a health maintenance organization as it deems appropriate, so long as the new covered and economic benefits are substantially similar to those which pre-dated this Agreement.

Section 20.2 of the 2001-2005 Agreement set employee monthly premium costs according to the following schedule:

EFFECTIVE DATE	SINGLE COVERAGE	FAMILY COVERAGE
5/1/01	$0	20% up to $65
5/1/02	$0	20% up to $80
5/1/03	$0	20% up to $90
5/1/04	$0	20% up to $100

Section 20.2 of the 2001-2005 Agreement further provided that:

If the Village agrees that any other full-time Village employee(s) can pay a lesser percentage or dollar contribution for dependent health insurance coverage, that lesser percentage or dollar contribution shall also be applicable to

> bargaining unit employees under the same terms and conditions and on the same date as for the other full-time Village employee(s). Each employee shall pay their portion of the premium contribution via payroll deduction.

b. The State Of Health Care And Collective Bargaining

In *City of Chicago and FOP Lodge 7* (2005) at 14, I discussed the then existing and still current state of bargaining over health care insurance:

> ... as I have unfortunately had to observe before, in the current economic climate collective bargaining between employers and unions on health care issues is most difficult. "Insurance costs are skyrocketing which makes bargaining on this issue border on the impossible."
>
> The national trend underscores the reality that employer health care costs are soaring at alarming rates and are being shifted to employees.

See also, my award in *County of Effingham and AFSCME Council 31*, S-MA-03-264 (2004) at 18:

> Presently, because of spiraling costs, insurance is simply a nightmare and at a crisis level for employers, employees and unions. To meet this national problem, sharing by employees in premium costs has become quite common.

Articles and studies support those conclusions.[51]

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[51] *See* Freudenheim, "Workers Feel Pinch of Rising Health Costs", New York Times (October 22, 2003):

> As health care costs head into a fourth consecutive year of double-digit increases, employers are shifting a growing share of the burden onto people who make the heaviest use of medical services.
>
> The trend — evident as companies begin informing workers of their benefit choices for the coming year — takes the form of fast-rising co-payments and deductibles, higher payroll deductions to cover spouses and children and new kinds of health plans that give workers a fixed sum to spend for employees of large companies have more than doubled since 1998, to $2,126 this year ... [and] expecting a 22 percent jump next year, to $2,595.

See also, Abelson, "Growth Rate in Health Cost to Employers Slowed in '04", New York Times (November 22, 2004 [emphasis added]):

> After years of double-digit cost increases, the rate of growth in what employers pay for employee health insurance slowed significantly this year ....
>
> The average employer cost for health benefits for an employee rose 7.5 percent in 2004, to $6,679, the lowest increase since 1999 .... Employers faced average increases of 10.1 percent in 2003.

[footnote continued]

The Village's experience parallels this trend.[52] According to Human Resources Director Stacy Hastings:[53]

> [Q] … [Y]ou are responsible for insurance for the Village?
>
> [A] Yes.
>
> [Q] And the Village has overall same insurance for all employees?
>
> [A] Yes. … We've had the same plan design for more than 15 years. At the time that the plan was designed it was a very common plan, basically one of those that you could walk in and pick off the shelf at any insurance company.
>
> The plan design has changed over the years. Now we have gone from a standard plan to a custom plan, and it's no secret that insurance costs have dramatically risen -- rose over the last several years and, frankly,

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[continuation of footnote]

> But this slowing rate was largely the result of employers shifting more of the cost onto their employees and changing the kinds of plans they offer ….

Further, *see* Ritter, "Health Care Hikes Land on Workers", Chicago Sun-Times (January 5, 2004):

> Big employers expect health care costs to increase by as much as 14 percent this year — and are devising new ways to pass costs on to workers, company surveys have found.
>
> In addition to making workers and retirees pay higher premiums and co-pays, companies are beginning to impose higher fees on employees who want to cover their spouses or use expensive hospitals.
>
> This year will mark the fifth straight year of double digit increase in health care costs. Companies are paying twice as much today as they were six years ago ….

Finally, *see* "Employer Health Benefits 2004 Summary of Findings", Kaiser Family Foundation ("The rate of growth of health care premiums moderated somewhat in the last year, but continues to grow at double digit rates"); Porter, Freudenheim and Andrews, "Cost of Benefits Cited as Factor in Slump in Jobs", New York Times (August 19, 2004) ("A relentless rise in the cost of employee health insurance has become a significant factor in the employment slump, as the labor market adds only a trickle of new jobs each month despite nearly three years of uninterrupted economic growth"); Hewitt Associates, "Survey Findings Health Care Expectations: Future Strategy and Direction 2004" ("Health care in the U.S. is at a turning point because the cost of care is becoming unacceptable to both employers and employees … creating an environment of change in the U.S. health care system"); Towers Perrin HR Services, "2004 Health Care Cost Survey" ("Large employers are experiencing yet another year of double-digit health care cost increases ….").

[52] The Village is self-insured. Tr. 232, 240.

[53] Tr. 196-197.

> we're out of options as to how to contain costs in our insurance programs.
>
> I've brought on some new insurance consultants that have done a lot of good for the Village. They've saved us a lot of money. And even with experts, expert insurance brokers, they're at a loss, too. We're just -- we're out of options, and we need the right to change to help contain costs.

c. The Parties' Proposals

With respect to insurance coverage, the Village seeks to modify Section 20.1 as follows:[54]

> The Village shall make available to non-retired employees substantially similar group health and hospitalization insurance and life insurance coverage and benefits ~~as existed prior to the signing of the Agreement except as amended as follows effective May 1, 2001~~ as are provided to all other full time Village employees who are not members of the Union's bargaining unit.
>
> ~~(a) the annual deductible shall be one hundred fifty dollars ($150) for single and four hundred fifty dollars ($450) for family; and~~
>
> ~~(b) the co-insurance shall be eighty percent (80%) paid by the Employer and twenty percent (20%) paid by the employee to a maximum employee out-of-pocket cost of one thousand dollars ($1,000) if the PPO doctors and facilities are used. However, if a doctor or facility not a part of the PPO is used, the co-insurance shall be sixty percent (60%) paid the bye Employer and forty percent (40%) paid by the employee to maximum employee out-of-pocket cost of one~~

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[54] Joint Exh. 4(b) at par. 2(a); Village Exh. 51(a); Village Brief at 21-26. Although the language provisions in the Village's proposal referred to "all other full time Village employees" with respect to coverage for non-retired employees and "majority of Village employees" for changes in Carriers, benefit levels, etc. (*see* Joint Exh. 4(b) at par. 2(a); Village Exh. 51(a)), the Village has modified that difference to provide that changes shall be consistent and provide "all other full time Village employees" for all aspects of its coverage proposal. *See* Village Exh. 51(a); Village Brief at 21-22; Tr. 195 ("... we are indicating to the Arbitrator who does have authority to modify non-economic proposals that the Village would be very comfortable living with an amendment to our final proposal ... that the benefits applicable to bargaining unit employees would have to be the same as provided all other Village employees ...."). *See also*, Tr. 225.

~~thousand dollars ($1,000). The 60/40 percent co-insurance rate does not apply to the dental portion of the plan or to emergencies outside the Village of Lansing geographical area.~~

Further, the Village shall, to the extent required by law, make available to retired employees the ability to participate in its group insurance program for individual and dependent coverage, with premiums to be paid by the retired employee. Arrangements for reimbursement of premiums to the Village should be made with the Director of Personnel. The Village reserves the right to change insurance carriers or benefit levels, to self-insure, or to participate in a health maintenance organization as it deems appropriate, so long as the new covered and economic benefits are substantially similar to those ~~which pre-dated this Agreement~~ provided to all other full time Village employees who are not members of the Union's bargaining unit.

The Union proposes no change in coverage as provided in Section 20.1 of the 2001-2005 Agreement.[55]

The Union proposes changes to health insurance premium payments as follows (with all other language remaining the same):[56]

EFFECTIVE DATE	SINGLE COVERAGE	FAMILY COVERAGE
5/1/05	$0	20% up to $100
5/1/06	$0	20% up to $100
5/1/07	20% up to $10	20% up to $120
5/1/08	20% up to $10	20% up to $130

The Village's proposals for changes in health insurance premium payments are more extensive. With respect to employee premium costs, the Village proposes the following schedule:[57]

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[55] Joint Exh. 4(a) at par. 4; Union Brief at 27.

[56] Joint Exh. 4(a) at par. 5, detailed language at Article XX, Section 20.2; Union Brief at 27. *See also*, Union letter of February 9, 2007. After commencement of the hearing, the Union made proposals effective May 1, 2008 and May 1, 2009 which were contingent upon resolution of the duration issue. Union Brief at 27. The May 1, 2008 proposal is set forth in the table. The May 1, 2009 proposal was 20% up to $20 for single coverage and 20% up to $140 for family coverage. *Id.* As found *supra* at III(B)(1), the Agreement shall run to April 30, 2009, thereby making the Union's May 1, 2008 proposal relevant and its May 1, 2009 proposal not relevant.

EFFECTIVE DATE	SINGLE COVERAGE	FAMILY COVERAGE
2005	$0	20% up to $100
2006	4%	11%
5/1/07	5%	13%
5/1/08	6%	15%

The parties have separated the insurance issues into non-economic and economic items. Specifically, the parties agree that the language changes in Section 20.1 regarding coverage are "principally non-economic".[58] With respect to insurance costs in Section 20.2, the parties agree that the issue is "principally economic".[59]

d. Resolution - Section 20.1 (Coverage)

With respect to Section 20.1 (coverage), the Union seeks no change, thus maintaining the prior provisions of Section 20.1's requirement that the Village provide "... substantially similar ... coverage and benefits as existed prior to the signing of this Agreement ..." along with changes made in the 2001-2005 Agreement with respect to annual deductibles and co-insurance. The Village seeks to change the language in Section 20.1 so that its obligation is to provide "... substantially similar ... coverage and benefits as are provided to all other full time Village employees who are not members of the Union's bargaining unit." According to Human Resources Director Hastings:[60]

[continuation of footnote]

[57] Joint Exh. 4(b) at par. 3(b)(5); Village Brief at 27-32. The Village's proposal for 2005 is no change from the last year of the 2001-2005 Agreement.

The Village proposed further increases effective May 1, 2009 (7% for single coverage and 16% for family coverage). *Id*. Again, as with the Union's May 1, 2009 conditional proposal, because the Agreement will terminate April 30, 2009, the Village's proposal for another increase effective May 1, 2009 is not relevant.

[58] Joint Exh. 1 at par. 5(a)(2).

[59] *Id*. at par. 5(a)(1).

[60] Tr. 205.

> We're asking for the right to have flexibility that would be applied universally to all of our employees, including myself, including the two elected officials that are also covered under our insurance plan, which would be the mayor and village clerk. This would be for everyone.

With the added provisions discussed *infra*, the Village's proposal on coverage shall be adopted.

First, with respect to internal comparability, the Village's proposal here is similar to the one it negotiated with the Firefighters for their 2005-2009 contract.[61] The Village points out that in the past I have found with respect to insurance issues (and depending on the facts) that "... for purposes of this case internal comparability determines this issue."[62] I have made that observation in other cases — *i.e.*, that agreement in another bargaining unit on an insurance package "... must be given substantial weight."[63]

The Firefighters agreed to the essential language the Village seeks in this case. That internal comparable has great weight in driving the imposition of that similar requirement in this bargaining unit.

Second, as discussed *supra* at III(C)(1)(b), due to the health care crisis, there has been a decided shifting of costs and changing of coverages which are the result of the increased costs facing employers which are being imposed upon them by insurance companies. According to Human Resources Director Hastings, although there was a slight premium reduction in 2006 (3.5%), the

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[61] Tr. 194, 198, 226; Village Exh. Book II, tab 8 at Section 18.1, Village Exh. 52 at 2 (with the difference concerning the modification in the language concerning "majority of Village employees" and "all other full time Village employees."). According to the Village, with respect to treating employee groups differently for coverage purposes, "[w]e don't seek to do that ... we have no intention of doing that, and we're willing to agree to contractual language which will prohibit any such distinction ... we have no interest in getting into different insurance levels and benefits and we don't want to invite grievances, we're willing to live with that change." Tr. 195-196.

[62] Village Brief at 24-25, citing *City of Countryside and FOP Labor Council*, (2003) at 12-13.

[63] *County of Effingham, supra* at 20.

Village has been advised that it will be facing a 10% premium *increase* for 2006-2007.[64] According to Hastings:[65]

> I don't have a written policy yet. I don't have a written renewal in front of me, but they have verbally told me that we're looking at about 10 percent ... [i]increase.

This is not a hypothetical problem. The problem is a real one.[66] By allowing the Village to make the kinds of changes it proposes in the language in Section 20.1 (similar to the changes agreed to by the Firefighters), the Village's proposal allows it to respond to the trends other employers have been facing. The Union's proposal does not take into account the health care crisis now facing employers, employees and unions, but instead locks in coverage to what existed in 2005 (which, in turn, because of the language in Section 20.1 of the 2001-2005 Agreement, locks in coverage to basically what existed in 2001 with the modifications concerning deductibles and co-insurance).

There does not appear to be a dispute that the external comparables favor the Union's position (Tr. 227):

> MR. BAILEY: ... So the language, then, that we're trying to maintain in the contract about the substantially -- it's not substantially similar to other people but substantially similar to a point in time, that's more in line with the comparability?
>
> MR. BAIRD: Yes. External comparables.

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64 Tr. 205-206; Village Exh. 56 at p. 12. *See also*, Tr. 210 ("[a]nd last year we actually had a decrease.").

65 Tr. 206.

66 *Compare* my award in *Village of Oak Brook and Teamsters Local #714*, S-MA-96-73 (1996) at 10, where I rejected changes in insurance proposed by the village in that case on the basis that such a change would be a "good idea":

> ... [T]he Village is asking me to find as reasonable a cost sharing concept ultimately designed to hold down premium costs when the Village has not shown that its overall premium costs have significantly risen. From the evidence before me, the Village's position is, at best, a theoretical one. Cost sharing is a good idea to hold down premium costs. But, there is no rational basis demonstrated in fact to justify that position in this case.

On balance, the external comparability factor does not change the result of my selection of the Village's proposal on coverage, particularly given the internal comparable established by the Village's contract with the Firefighters.

I am therefore satisfied that the Village should be allowed to make changes in coverage, so long as the Village provides "... substantially similar group health and hospitalization insurance and life insurance coverage and benefits as are provided to all other full time Village employees who are not members of the Union's bargaining unit" as it proposes for Section 20.1.

However, by agreement of the parties, this issue is a "principally non-economic" one.[67] As discussed *supra* at III(A), because the issue is non-economic, in structuring the benefit I am therefore not strictly confined to the parties' last offers. Indeed, it was not disputed at the hearing that because coverage has been designated as a non-economic item, as an arbitrator "... I have the ability to change things."[68] On the issue of coverage, I choose to exercise that authority.

Notwithstanding the above showing by the Village that a change is needed, I am somewhat hesitant to impose the language change sought by the Village without some kinds of further protection for the employees. Given the movement away from requiring the Village to provide converge "... substantially similar to those which pre-dated this Agreement" as found in the 2001-2005 Agreement to now allowing the Village to make changes in coverage so long as those changes are "... substantially similar group health and hospitalization insurance and life insurance coverage and benefits as are provided to all other

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67 Joint Exh. 1 at par. 5(a)(2).

68 Tr. 241-242.

full time Village employees who are not members of the Union's bargaining unit", the draconian scenario that is hanging out there is the potential substantial changing of the insurance coverage benefit — one that is done across the board for all Village employees — and thereby is arguably now permissible because the Village continues to provide "... substantially similar group health and hospitalization insurance and life insurance coverage and benefits as are provided to all other full time Village employees who are not members of the Union's bargaining unit". There must be some protection against that from happening unless major coverage changes are absolutely necessary and are made as a last resort.

There is a protection for the employees in the requirement that if there is a gutting or substantial reduction of coverage, that change — indeed any change — will have to be for *all* Village employees. The impact of the imposition of the Village's proposal from permitting changes when they are done to "the majority of Village employees who are not members of the bargaining unit" to the more limiting language of permitting changes only if the changes are implemented to "all other full time Village employees who are not members of the Union's bargaining unit" sets up an internal check and balance in that before the bargaining unit employees have changes made to their coverage, those making the changes will have to incur the same changes. As the Village concedes, any changes it imposes under this language affects "[e]verybody including the mayor and the clerk, yes, and including the human resources director."[69] The ability to inflict pain upon others is often tempered when those administering the pain must also suffer it themselves.

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[69] Tr. 224. Further, according to the Village, "... obviously if we single out management or supervisors or elected officials ... that would be absolutely grievable." Tr. 222.

However, given the unknown consequences which could result from the Village's now substantially increased ability to make changes in coverage, in my opinion, that internal check is not enough. To make certain that it is understood that the authority granted to the Village to make changes in coverage is exercised as the proverbial shield and not as a sword and because this is a non-economic issue allowing me to modify a proposal, the following conditions will be added to the provisions of Section 20.1:

First, the parties shall draft language for insertion in Section 20.1 that requires the Village to notify the Union at least 60 days in advance of the effective date of any imposed changes in coverage under Section 20.1 (and prior to signing agreements with insurers implementing those changes) of the precise nature of the changes in coverage contemplated by the Village. Further, the language shall require that, upon request, the Village will meet with the Union for the purposes of obtaining the Union's input concerning any proposed changes. It must be understood that no bargaining or impasse resolution obligation is imposed by this notice and discuss requirement. This condition is imposed solely for the purpose of notification to the Union of any *contemplated* changes and to provide a framework for discussions so the Village can obtain the Union's views and suggestions before the Village acts under its authority granted by this award to impose changes in coverage.

Second, the Union shall have the right to grieve changes in coverage made by the Village. If the Village makes changes to existing coverage and if a challenge is made by the Union to those changes, aside from having to show that the changes are "… substantially similar group health and hospitalization insurance and life insurance coverage and benefits as are provided to all other full time Village employees who are not members of the Union's bargaining

unit", the Village will have the burden to justify those changes in any proceedings through the grievance and arbitration process. The standard for arbitral review of any such changes will be *de novo* review and not a lesser standard such as whether the Village acted in an arbitrary or capricious manner in the exercise of a managerial prerogative. If contested by the Union, the burden will be on the Village to justify the changes in coverage.[70]

The Village has gained substantial latitude in this award by obtaining the ability to make changes in coverage so long as those changes are "... substantially similar group health and hospitalization insurance and life insurance coverage and benefits as are provided to all other full time Village employees who are not members of the Union's bargaining unit", whereas in the 2001-2005 Agreement the Village was limited by Section 20.1 to making changes

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[70] The standard for arbitral review of an employer's exercise of a management right is more limited than the standard for review of an alleged violation of a specific contract provision. *See* Elkouri and Elkouri, *How Arbitration Works* (BNA, 5th ed.), 660 ("Even where the agreement expressly states a right in management, expressly gives it discretion as to a matter, or expressly makes it the 'sole judge' of a matter, management's action must not be arbitrary, capricious, or taken in bad faith."). *See also*, *South Central Bell Telephone Co.*, 52 LA 1104, 1109 (Platt, 1969) ("In general, ... action is arbitrary when it is without consideration and in disregard of facts and circumstances of a case, without rational basis, justification or excuse."). In other words, in cases where an arbitrator is reviewing an employer's exercise of a management right, the employer has the "right" to be "wrong" — it just cannot be arbitrary. In review of alleged violations of specific contract provisions, the standard of review by an arbitrator is *de novo* — *i.e.*, whether the employer violated the provision of the contract, typically with the union having the burden to demonstrate that violation. *See The Common Law of the Workplace* (BNA, 2nd ed.), 55 ("In a contract interpretation case, the union is ordinarily seeking to show that the employer violated the agreement by some action it took; the union then has the burden of proof"); *Tenneco Oil Co.*, 44 LA 1121, 1122 (Merrill, 1965) (in a contract case, "... [t]he Union has the burden of proof to establish the facts necessary to make out its claim.").

In this case and given the unknown consequences of the Village's newly obtained ability to impose changes in coverage, the standard for review of challenges to any such changes will be *de novo* review, but with the burden on the Village to justify the changes it imposes.

A simple proposition will suffice. If the Village seeks to change coverage but the evidence shows that it can continue to provide substantially similar coverage without increased premiums (or if changes are imposed at a time similar to 2006-2007 when there was a premium *reduction* of 3.5% — *see* Tr. 206), the Village will be hard-pressed to convince an arbitrator that a change in coverage is justified. On the other hand, if the Village can show that maintenance of existing coverage will come only with substantially increased premiums, changes in coverage will be permitted.

only to the extent that the end-product was "... substantially similar to those which pre-dated this Agreement" with additional modifications to deductibles and co-insurance. Given that success which comes in response to the Village's showing that it needs flexibility, the increased ability to make changes must still be justified and the Union must have a vehicle to realistically challenge changes it believes are not warranted. The parties shall draft language for that requirement to be included in Section 20.1.

Third, Human Resources Director Hastings' testimony that "... we're out of options, and we need the right to change to help contain costs" is compelling and, particularly with the internal comparable achieved with the Firefighters, forms the basis for imposing this change.[71] The tipping factor in this case was the Village's obtaining the language from the Firefighters. Quite frankly, were it not for the Village's obtaining that similar language from the Firefighters and establishing the internal comparable, I would not have imposed the language in this Agreement allowing the Village to make changes in coverage in this bargaining unit as it would have amounted to a substantial change without a sufficiently demonstrated steady insurance premium increase experience over a period of time. Again, while Human Resources Director Hastings testified that the Village has been told to expect a 10% premium increase, she also testified that in the past year "... there was a slight reduction in premium ... three and a half percent."[72] But even with that reduction in the prior year, in this case, the

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[71] Tr. 197.

[72] Tr. 206. *See also*, the Village's May 1, 2006 insurance renewal showing savings amounting to 3.5%. Village Exh. 56 at 2-3.

internal comparable established by the Firefighters contract is an insurmountable barrier for the Union to hurdle.[73]

But even with the checks and balances that exist and those which I have added thus far, the Village still has obtained substantial authority to exercise its right to make changes in coverage and potentially impose insurance havoc on the employees — not because of a malicious intent, but because the crisis in health insurance and market forces leave the Village little choice. And this is the type of havoc I am speaking of: *See* Abelson, "Study Ties Bankruptcy to Medical Bills", New York Times (February 2, 2005):

> Sometimes, all it takes is one bad fall for a working person with health insurance to be pushed into bankruptcy.
>
> Hundreds of thousands of Americans file for personal bankruptcy each year because of medical bills - even though they have health insurance, according to a new study by Harvard University legal and medical researchers.
>
> "It doesn't take a medical catastrophe to create a financial catastrophe," said Elizabeth Warren, a Harvard law professor who studies bankruptcy and is one of the authors of the study.
>
> The study, which is scheduled to appear today on the Web site of Health Affairs, an academic journal, provides a glimpse into a little-researched area connecting bankruptcy and medical costs. About 30 percent of people said they filed for bankruptcy because of an illness or injury, even though most of them had health insurance when they first got sick.
>
> Many lost their jobs - and their insurance - because they got sick, while others faced thousands of dollars in co-payments and deductibles and for services not covered by their insurance.
>
> * * *

[73] But my not imposing the language sought by the Village concerning coverage would have also changed the wage resolution discussed *infra* at III(C)(2) in that the higher wages selected as sought by the Union were directly driven by the resolution of the insurance question.

> And employees, who often have little choice of plans and frequently do not understand the differences among plans, are increasingly offered policies with less and less coverage, some policy analysts say.
>
> * * *
>
> The findings also raise questions about the effect of asking employees to bear a greater share of health cost through higher co-payments and the like. Many employers are shifting the increasing cost of care onto their employees, arguing that that trend gives workers an incentive to make judicious use of health care. But the researchers say higher co-payments and deductibles may will exacerbate the problem of medical bankruptcies.

As I see it, the Village's approach is in response to the insurance crisis. Indeed, that is precisely what Human Resources Director Hastings said ("... it's no secret that insurance costs have dramatically risen -- rose over the last several years and, frankly, we're out of options as to how to contain costs in our insurance programs.").[74] So from my perspective, the parties have to now see how this new authority possessed by the Village works. To accomplish that goal, the Village's authority should be allowed to play out for the duration of the Agreement. If the authority now possessed by the Village to make changes does not work, the parties will have to go back to the drawing board. Therefore, in light of the new substantial authority possessed by the Village to make changes as required by this award and the very unknown consequences which may follow, at the expiration of the Agreement, the new language allowing the Village to make changes so long as they are "... substantially similar group health and hospitalization insurance and life insurance coverage and benefits as are provided to all other full time Village employees who are not members of the Union's bargaining unit" shall not be considered the *status quo*. The prac-

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[74] Tr. 197.

tical effect is that the Village shall have the authority it obtained in this award, but only for the duration of the Agreement. Upon expiration of the Agreement, the parties can agree to extend the language and it may well be that to keep that language in a successor Agreement the Village will have to show that the authority it obtained in this case is working for the parties' mutual concerns under the circumstances facing those who must bargain over health insurance.

I recognize that by placing this condition on the Village's obtaining the ability to make changes in coverage, the Village will have that authority for a potentially limited time. But again, bargaining on health insurance is in chaos and is a nightmare. The Village's recent cost experience is a see-saw (2006-2007 showed a 3.5% cost reduction and 2007-2008 shows an expected 10% cost increase).[75] Because Human Resources Director Hastings' testimony that "... we're out of options, and we need the right to change to help contain costs" accurately reflects the current bargaining condition, the Village should be given the ability to see if this new option works. The language imposed by this award giving the Village the ability to make changes in coverage is therefore, in effect, an experiment — a somewhat different way for the parties to approach the very thorny issue of negotiating health insurance. As frustrating as it is for the parties to try to negotiate their way through the health insurance thicket, it is just as frustrating for interest arbitrators to try to formulate terms in this most difficult area when very sophisticated negotiators such as those involved in this case could not do so. If the language now imposed in Section 20.1 does not work to both parties' benefit, the parties will have to address insurance cover-

[75] Tr. 206; Village Exh. 56 at 2-3.

age in yet some different way come expiration of the Agreement at the end of April 2009. Under the circumstances, I see no other reasonable options.[76]

e. Resolution - Section 20.2 (Costs)

With respect to Section 20.2 (costs), the parties are in agreement for 2005 that there should be no change from the last year of the 2001-2005 Agreement. However, commencing in 2006, the parties differ on percentage contribution levels (the Union proposing lower levels than the Village) and whether there should be caps on those contributions (the Union proposing caps and the Village proposing no caps).

By agreement of the parties, this is a "principally economic" item therefore requiring that I am confined to selection of one of the parties' offers.[77] The Village's offer (with the exclusion of May 1, 2009) is selected.

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[76] By allowing the language change sought by the Village in Section 20.1, but not permitting that language to be the *status quo* at the expiration of the Agreement, I do not intend that the *status quo* will revert to the language in Section 20.1 which existed in the 2001-2005 Agreement and which obligated the Village to provide "... substantially similar group health and hospitalization insurance and life insurance coverage and benefits as existed prior to the signing of the Agreement ..." with the additional specified changes for annual deductible and co-insurance from the Agreement which preceded the 2001-2005 Agreement. Something has to be done to address the insurance crisis which has trickled down to these parties. If the language imposed by this award with the conditions I have added do not do the job, or if there is insufficient time to assess the impact of any changes (*e.g.*, because changes in insurance coverage are not actually implemented during the life of this Agreement or do not take effect for some period of time because the Village is negotiating its initial contract for Public Works with IUOE Local 150 and the Village cannot make changes until all Village employees have the same changes), the parties will effectively be back to square one on insurance coverage and they will have to assess their insurance coverage needs when this Agreement expires on April 30, 2009 and address those future needs in their next round of negotiations. If that is the case, the parties may want to extend this language or, absent agreement, an interest arbitrator for the next Agreement may need to consider whether to do so or take a different approach regarding insurance coverage taking into consideration the status of bargaining for insurance at that point in the future and the Village's experience in providing coverage for the duration of this Agreement. The bottom line is that the Village wanted flexibility and it got it — albeit not to the degree it desired, but nevertheless sufficient to take justifiable steps to control this runaway insurance freight train. How that flexibility plays out remains to be seen.

[77] Joint Exh. 1 at par. 5(b)(2).

First, as with the changes in Section 20.1 discussed *supra* at III(C)(1)(d) concerning coverage, for the duration of this Agreement (May 1, 2005 - April 30, 2009), the Village's proposal on costs is the same as those costs negotiated with the Firefighters in their 2005-2009 contract.[78] For the same reasons discussed *supra* at III(C)(1)(d), that internal comparable must be given great weight and really drives the selection of the Village's proposal.

Second, again I return to the health care crisis discussed *supra* at III(C)(1)(b). The Union's proposal is a modest acknowledgement that changes must be made. However, it is not enough. The national trend is skyrocketing insurance increases with resultant increased costs passed on to employees. The Village is expecting a 10% premium increase for 2007-2008.[79] The Village's proposal is more in line with dealing with the crisis facing these parties in specific and the rest of the employment sectors in general.

The Village's proposal for 2005-2008 is selected.

2. Wages

The parties' proposals on wages for 2005-2008 are as follows:[80]

Effective Date	Union	Village
5/1/05	3.50%	3.00%
5/1/06	3.75%	3.00%
5/1/07	4.00%	3.25%
5/1/08	4.00%	3.25%
TOTAL	15.25%	12.50%

The Union's proposal on wages is selected.

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78 Tr. 197-200; Village Exh. Book II, tab 8 at Section 18.1; Village Exh. 52 at 2.

79 Tr. 206.

80 Joint Exh. 4(a) at par. 2; Union Brief at 7; Joint Exh. 4(b) at par. 3(b)(3); Village Brief at 7. Again, because the Agreement will expire on April 30, 2009, the parties' proposals for increases effective May 1, 2009 are not relevant.

First, given the length of this Agreement, the total percentage difference between the two offers is not great — 2.75% over four years. It is not unusual for me to see that kind of percentage difference in positions concerning each *year* of a contract as opposed to, as here, the total duration of a four year contract.

Second, the insurance changes — both coverage and costs — imposed as discussed *supra* at III(C)(1) are increases with yet to be determined consequences (coverage) and fixed percentage, but uncapped premium contributions (costs). In the end, the results of those changes successfully obtained by the Village are all unknown, but yet, are substantial modifications from the 2001-2005 Agreement which had known coverages and fixed and predictable expenses for the employees. Given the increases in insurance premium payments to be made by the employees and further given the unknowns for the next few years concerning what those increases may be and what coverages may be modified (with potential increased costs to the employees), the better approach when making this kind of substantial conversion from fixed coverages and expenses to those which become unknown and uncapped is to allow a build up of wage increases as the insurance changes and increased costs are phased in to serve as a buffer against the insurance increases to be absorbed by the employees. The Union's wage proposal does that better than the Village's proposal.

Third, with respect to internal comparability, the Firefighters contract provides for wage increases of 3.5% in 2005, 5.0% in 2006, 5.0% in 2007 and 3.5% in 2008 — a total of 17% over the life of that contract.[81] At first blush,

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[81] Village Exh. 52.

because the Union's offer here is a total of 15.25% over the life of the Agreement which has the same duration — *i.e.*, percentage-wise, less than the Village's negotiated increases for the Firefighters — it would seem that the Union's offer should be readily accepted.

But the Village explains that the increased percentages given to the Firefighters are misleading because those increases were given in exchange for an agreed upon increase in the Firefighters' annual hours worked from 2,080 to 2,713 hours per year as a result of a change from a 16 hour shift followed by two consecutive days off to a 24 hour shift followed by 48 consecutive hours off and a Kelly Day every 14th shift, which would then result in a cut in the rate of their overtime pay by 23%.[82] That changed pay and schedule structure for the Firefighters and the yet unknown real impact on overtime presents a classic apples to oranges comparison between the Police and Fire services. Given that substantial change under the Firefighters contract, I cannot rationally compare the two groups.

The Village also points to 3% increases given to paid-on-call firefighters and non-union Village employees in 2005 and 2006.[83] But those increases were given before the unknown and uncapped consequences of the Village's insurance proposals have played out and the wage increases for 2007 and 2008 for those groups are not completely specified.[84] And, another unknown is the results from the Village's negotiations for the Public Works employees with

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82 Village Brief at 7-8; Village Exh. 52; Tr. 200-201.

83 Village Brief at 7-8; Village Exh. 31.

84 The POC employees received a 3% increase in 2007, but the non-union employees do not have specified increases for that year. *See* Village Exh. 31; Village Exh. Book II, tab 11 at Appendix C.

IUOE Local 150. Therefore, in my opinion, the increases to those other internal employee groups cannot change the result.

Internal comparability therefore does not change the result.

Fourth, external comparability must also be considered.[85]

The Union produced an exhibit showing placement of officers in the bargaining unit for 2004-2005 and 2005-2006 compared to wages paid to police officers in the agreed upon comparable communities at various benchmarks (*e.g.*, start, 5, 10, 15 and 20 years).[86] From that exhibit, the Union concludes:[87]

> ... [T]he difference between the two wage offers is not extreme and, as a result, does not affect the ranking of the Village's officers among the officers in the comparable communities. The Union's offer is slightly above that being proposed by the Employer, but not enough to impact the rankings among the external comparables. ....

Based on the Union's exhibit, that observation is correct. The other side of the coin comes from the Village, with its assertion — also supported by its analysis — that there are greater ranking movements under the Union's offer than under the Village's offer.[88] However, the Village recognized consistent with the Union's assertion that in terms of position changes in the rankings of the Village and the external comparables, "... under either proposal there's not a significant difference in jumping positions."[89]

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85 As noted *supra* at I, the parties agreed that Blue Island, Calumet City, Hazel Crest, Homewood, Midlothian, Oak Forest, Park Forest and South Holland are comparable communities to Lansing. Joint Exh. 1 at par. 7.

86 Union Exh. 11 at 6.

87 Union Brief at 8.

88 Village Brief at 8 and Tab B; Village Exhs. 38-41.

89 Tr. 337.

The problem here is that because of differing expiration dates on the contracts in the comparable communities, the "out" years — *i.e.*, the years at the end of this Agreement — are not pinned down in all or a significant number of the comparable communities so that a reliable comparison can be made for the life of the Agreement. The Union recognized the problem in the context of a discussion concerning the cost of living:[90]

> … [n]ot only can't you use the cost of living, which is always the case in the future, but here you can't even use the comparables.

The Village similarly recognized the problem as the analysis looks toward the future:[91]

> … And obviously in the out years, Mr. Arbitrator, it becomes more tenuous. You just don't know what going to happen with them.

The speculative nature of wages paid in the external comparable communities is exemplified by the Village's statement in its brief that "[t]he 2007 and 2008 wage increase for each external community is based on the *average past wage increases in that community*."[92] Averages for past wage increases are not reliable predictors for future wage increases particularly where, as here, municipalities and unions are struggling with how to address convulsing insurance changes. Indeed, in some communities, the employers and unions have addressed the insurance difficulties by significantly spiking wage increases in out years as more insurance related expenses are increased, phased in and shifted to employees. With that kind of tumult, I cannot use average

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[90] Tr. 98.

[91] Tr. 333. *See also*, Village Exhs. 40-43 for 2006-2008, where the Village's comparability analysis contains increasing entries of "est" for estimated figures.

[92] Village Brief at 8, note 6 [emphasis in original].

past wage increases to predict what the comparables will do with respect to wages in the out years of their contracts.

In interest cases, external comparability often drives wage offer selections. But given the tenuous and speculative nature of the result of the external comparability analysis for the out years of the Agreement and, from what is known, the parties' mutual recognition that their offers do not really cause significant impact on the rankings within the comparables, external comparability cannot change the result that the Union's offer should be selected.

The bottom line here is that the Village achieved a significant change — albeit, a required one — in insurance coverage and costs. On the other end of that result, the employees have to be protected against an inordinate adverse impact resulting from those substantial changes. In addition to placing limitations on the Village's ability to change coverage (*i.e.*, through the obligation requiring that the Village give notice and meet with the Union to discuss insurance coverage changes, giving the Union the ability to contest changes through the grievance process and not making those language changes the *status quo* at the end of the Agreement — *see supra* at III(C)(1)(d)) and the reality that there will be increased (and as yet unknown) costs due to uncapped graduated increased premium payments to be made by the employees (*see supra* at III(C)(1)(e)), the best way to offset those increased expenditures now required from the employees is to buffer those increases and changes in insurance coverage and costs by granting the Union's requested wage increase which, on its face, percentage-wise, is not unreasonable and not far in excess of the wage proposal made by the Village.[93]

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[93] The Village views the paramedic stipend it offered and which is discussed *infra* at III(C)(3) as the *quid pro quo* for the insurance changes. Village Brief at 6; Village Exh. 13 ("Continua-
[footnote continued]

This is an economic issue. I therefore can only pick one of the two offers. Under the circumstances of this case, the Union's wage proposal is more reasonable and more nearly complies with the factors in Section 14(h) of the Act.. The Union's wage proposal is therefore selected.

3. Paramedic Stipend

When the 2001-2005 Agreement was negotiated, Police Officers, rather than Firefighters, had been providing paramedic services. As a result, the parties provided for a "paramedic stipend", which is reflected in Article XVII of the 2001-2005 Agreement:

> **ARTICLE XVII**
>
> **WAGES**
>
> * * *
>
> **Section 17.3: Paramedic Stipend**
>
> Employees who successfully perform as patrol officer/paramedics shall, in addition to their base salary, receive a monthly paramedic stipend for each completed month as follows:
>
> * * *

Years of Continuous Service As a Paramedic	Per Month 5/1/2002
Employment through 5 years	$200
6 through 10 years	$300
11 through 15 years	$400

[continuation of footnote]
tion of the paramedic premium and continuation at above-market levels are the Village's *quid pro quos* for the Village's requested insurance changes"); Tr. 280. I do not completely agree.

The paramedic stipend may well be a temporary benefit and serve the function of the Village's *quid pro quo* for the insurance changes. But given the substantial changes in insurance achieved by the Village which may be long-term, there must be a real viable buffer — and that buffer, in addition to the paramedic stipend, is the impact of the Union's wage proposal, again, one which over the entire term of the four year Agreement is only 2.75% over the Village's wage proposal.

16 years and beyond	$500

New employees during their probationary period shall receive one-half of the paramedic bonus upon certification by the State of Illinois as an EMT.

After study of the assignment of paramedic responsibilities, the Village decided to transfer paramedic duties from the Police Department to the Fire Department — a transition which the Village expects to complete by January 1, 2008.[94] In light of that planned transition, the requirement that police officers be certified as paramedics has been lifted and new hires are not required to hold paramedic certification.

The question becomes how to compensate police officers who continue to perform paramedic duties during the transition phase and for the duration of the Agreement. The parties have taken similar, but economically different approaches.

The Village proposes to add the following language at the end of Section 17.3:[95]

> If the Village no longer regularly assigns a police officer(s) to respond to paramedic calls, then such officer(s) shall continue to receive the paramedic stipend in such dollar amount as received by such employee on February 1, 2007, so long as such employee maintains his paramedic certification in good standing and provides paramedic services as may be assigned from time to time by the Village. The Village will continue it[s] past practice of providing continuing education opportunities so that a police officer with paramedic certification on February 1, 2007 may continue such certification in good standing if he or she desires to do so.

The Union proposes to add the following language to Section 17.3:[96]

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94 Village Exhs. 19-20; Tr. 277-279.

95 Joint Exh. 4(b) at par. 3(b)(4); Village Brief at 4-6.

96 Joint Exh. 4(a) at par. 3, detailed language at Section 17.3; Union Brief at 10.

> Should the Village discontinue the use and assignment of bargaining unit personnel to perform paramedic duties, the employees eligible under this Agreement to receive the paramedic stipend in this Section shall continue to receive it throughout the effective term of this contract; however, the eligible employees shall continue to progress through the steps of the paramedic stipend plan for a limited period of six months following the date the paramedic program was terminated, after which time the employees shall be frozen on the paramedic stipend plan at the step they have reached.

In short, the Village proposes that because of the transition of paramedic responsibilities from the Police Department to the Fire Department, in the event bargaining unit personnel are no longer "regularly assign[ed]" paramedic duties (and for the duration of the Agreement), the affected officers will continue to receive the paramedic stipend, but only at the rate they were paid as of February 1, 2007. The Union's proposal would allow the affected officers (if they are eligible) to move upward in the stipend table for a period of six months after the transition is completed and then would freeze the officers at that higher rate.

Assuming a January 1, 2008 transition date, the operation of the parties' proposals can be shown with the following examples of hypothetical officers who have performed paramedic services and continue to be qualified to perform those services:

The first example is the officer who reaches 16 years of service on February 2, 2007. The second example is the officer who reaches 16 years of service on June 29, 2008.

Under the first hypothetical example (the officer who reaches 16 years of service on February 2, 2007) and applying the Village's proposal, the officer would receive $500 per month as a paramedic stipend until January 1, 2008, which would then decrease to $400 per month (the rate received by the officer

as of February 1, 2007) for the duration of the Agreement (until April 30, 2009). Applying the Union's proposal, that officer would retain the $500 per month stipend — a difference of $1600 between the two proposals for the 16 month period from the January 1, 2008 transition date to the April 30, 2009 Agreement termination date.

Under the second hypothetical example (the officer who reaches 16 years of service on June 29, 2008) and applying the Village's proposal, as of the January 1, 2008 transition date, the officer's stipend would be $400 per month (because the officer had less than 16 years of paramedic service as of the transition date) and would remain at that level for the duration of the Agreement (because that was the level of the officer's stipend as of February 1, 2007). Under the Union's proposal, even though the officer performed *no* paramedic services after January 1, 2008, the officer would receive $400 a month until he reaches his 16th year of service on June 29, 2008 and then would receive an increase to $500 per month — a difference of $1000 between the two proposals for the ten months from June 29, 2008 to the April 30, 2009 Agreement termination date.

The monetary impact on the bargaining unit and the Village will vary based on employee anniversary dates and the actual transition date. Indeed, because of their placement in the stipend schedule, officers may experience no impact under either offer (*e.g.*, assuming a January 1, 2008 transition date, an officer at seven years of service on that date would receive $300 per month for the duration of the Agreement under either proposal because that is the amount the officer received on February 1, 2007 (the Village's proposal) and there would be no movement to a higher paramedic step within six months (the Union's proposal). Should the transition not actually occur on January 1,

2008, the impact date of the proposed changes will obviously affect the amount and duration of the stipend. Other questions exist in that under both proposals there could be a factual question as to the actual transition date when "… the Village no longer regularly assigns …" paramedic duties to officers [Village proposal] or when the Village actually "… discontinue[s] the use and assignment …" of such duties [Union proposal] — questions which may have to be sorted out through the grievance process.

This situation is unique in that there may — and probably will — come a time during the life of this Agreement when there is a complete transition of the paramedic services from the Police Department to the Fire Department as planned. Under both proposals, after that transition occurs, the officers may no longer perform paramedic services, but nevertheless, the officers will receive a stipend for work they no longer perform at least for the duration of the Agreement. The Village does not dispute that even under its proposal, officers will be compensated (although at the February 1, 2007 rate) for work the officers are no longer required to perform:[97]

> … [W]e're agreeing to allow these folks, this unit, to continue to receive thousands of dollars a year when they're not even performing the duties that justify the premium. …

Common sense seems to dictate that if employees are going to be compensated for work they no longer perform, the lesser of the two levels of compensation should be chosen — *i.e.,* the Village's proposal. An employee should not be entitled to a pay increase for work potentially long after the employee no longer performs the work which is the result of the Union's proposal (as shown by the example of the officer who reaches 16 years of service on June 29, 2008;

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[97] Tr. 280-281.

performs no paramedic services after the January 1, 2008 transition date; but then gets a $100 per month raise six months after the officer ceased performing paramedic services).

But there is a statutory factor which I believe determines this issue — the overall compensation factor in Section 14(h)(6) of the Act. Under this award, the employees have received the higher wages the Union sought on their behalf. While the insurance concessions imposed by this award were the driving factor for the selection of those higher wage increases (*see* discussion *supra* at III(C)(1)), in the end, the real impact of the insurance changes is unknown. The wage increases sought by the Union are the buffer against the unknown impact caused by the insurance changes. To continue any benefit for the duration of the Agreement which pays employees for work not performed is a further buffer against potential and unknown adverse impacts which may be caused by the insurance increases and changes. That is what the Village's proposal does.[98] But to allow for potential increases in a benefit paid for work not performed potentially long after the work is taken from the bargaining unit as the Union proposes, in my opinion, crosses the line established for buffering against the unknown impact of the insurance changes and runs contrary to the overall compensation factor. If insurance proves, in fact, to be a large cost item to the employees, and particularly given the shortened expiration date of April 30, 2009 rather the April 30, 2010 date sought by the Village, the Union can address that issue in the next round of negotiations. However, in my opinion, there is no factual or statutory basis to justify *increased* payments to

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[98] *See* Tr. 280-281, quoted *supra*.

employees *for work not performed* as the Union proposes, especially when the employees may not have performed that work for many months.

The Union's argument that implementation of the Village's offer would cause unfair results is not persuasive to change the result.[99] The Union argues:[100]

> … [T]he Village's proposals can produce some unfair results. If the Village were to wait over a year or two to implement this transition, then under the Village proposal, the police officers would receive a cut in pay to perform these paramedic duties. Their pay would be reduced from May 2008 or May 2009 levels to February 2007 levels. ….

The Union's hypothetical raises the *contractual* question to be later resolved through the grievance procedures concerning when the transition actually takes place — *i.e.*, what is the date "… the Village no longer *regularly* assigns a police officer(s) to respond to paramedic calls …" [emphasis added]. The word "regularly" is loaded with shades of gray. If officers are used to perform paramedic services with frequency after the Village asserts the transition has occurred (and how much frequency rises to be "regularly assigns", I shall offer no opinion), then there is a question whether the transition has, in fact, taken place. If the transition has not, in fact, taken place, then the February 1, 2007 levels imposed by the Village's proposal would not be applicable and the officers would continue to be paid and progress along the stipend schedule until such time as the transition actually takes place. When the transition actually takes place, the February 1, 2007 stipend levels are triggered (again, stipends which are paid for work that is no longer performed).

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[99] Union Brief at 12.

[100] *Id.*

On balance, the chance that sporadic or irregular use of officers to perform paramedic service after an actual transition date with pay at the February 1, 2007 level might occur cannot counter the result of the Union's proposal which would grant paramedic stipend increases to employees long after they ceased doing paramedic work so as to justify selection of the Union's proposal.

IV. CONCLUSION AND AWARD

The parties shall draft language consistent with this opinion and award. With the consent of the parties, I will retain jurisdiction to resolve disputes which may arise over the drafting of such language.

In sum and based on the above, the award in this matter (which incorporates all tentative agreements reached by the parties which were not subject to dispute in this case) shall be as follows:

A. Duration

May 1, 2005 - April 30, 2009. Retroactivity on wages shall be to May 1, 2005 and shall be on all hours paid. Retroactive payments shall be made to the employees within 45 days of the date of this award, or to a date agreed upon by the parties, or by another date for good cause shown. Disputes over other retroactivity issues shall be handled as grievances.

Concur:

/s/ James Baird

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James Baird - Village Delegate

/s/ Gary Bailey

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Gary Bailey - Union Delegate

B. Residency

Village proposal — residency in the Village is required, but if an employee is within three years of retirement eligibility, that employee can establish residency within 12 miles of Village Hall in the State of Illinois, provided that the employee signs a written agreement committing to retire within three years of moving outside of the Village and that effective January 1, 2008 and January 1, 2009, the three year requirement would be relaxed to four years and then five years, respectively.

Concur:

/s/ James Baird

James Baird - Village Delegate

Dissent:

/s/ Gary Bailey

Gary Bailey - Union Delegate

C. Grievance Procedure And Discipline

Union proposal — the Agreement shall be changed to allow officers to choose between the grievance and arbitration procedure under the Agreement and the Board of Fire and Police Commissioners for the forum in which to resolve challenges to disciplinary suspensions and discharges.

Concur:

/s/ James Baird

James Baird - Village Delegate

/s/ Gary Bailey

Gary Bailey - Union Delegate

D. Health Insurance

1. Coverage

Village proposal — change Section 20.1 to provide for the Village's right to change coverage if "... substantially similar ... coverage and benefits as are provided to all other full time Village employees who are not members of the Union's bargaining unit." However, Section 20.1 shall also provide that:

> (1) The Village will notify the Union at least 60 days in advance of the effective date of any imposed changes in coverage (and prior to signing agreements with insurers implementing those changes) of the precise nature of the changes in coverage contemplated by the Village and, if requested by the Union, the Village will meet with the Union for the purposes of obtaining the Union's input and suggestions concerning the proposed changes, further noting that the obligation imposed to notify and meet does not amount to a bargaining obligation or a right to impasse resolution;
>
> (2) The Union shall have the right to grieve any changes in coverage under a *de novo* standard and the Village will have the burden to demonstrate that the changes are required; and
>
> (3) In order to give this language an opportunity to work and for the parties to assess the impact of the language, the change in Section 20.1 shall be for the duration of the Agreement and will not be considered the *status quo* upon expiration of the Agreement.

Concur:

/s/ James Baird

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James Baird - Village Delegate

/s/ Gary Bailey

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Gary Bailey - Union Delegate

2. Costs

Village proposal:

EFFECTIVE DATE	SINGLE COVERAGE	FAMILY COVERAGE
2005	$0	20% up to $100
2006	4%	11%
5/1/07	5%	13%
5/1/08	6%	15%

Concur:

/s/ James Baird

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James Baird - Village Delegate

Dissent:

/s/ Gary Bailey

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Gary Bailey - Union Delegate

E. Wages

Union proposal:

Effective Date	Increase
5/1/05	3.50%
5/1/06	3.75%
5/1/07	4.00%
5/1/08	4.00%

Concur:

/s/ James Baird

_____

James Baird - Village Delegate

/s/ Gary Bailey

_____

Gary Bailey - Union Delegate

F. Paramedic Stipend

Village proposal — add the following language at the end of Section 17.3:

If the Village no longer regularly assigns a police officer(s) to respond to paramedic calls, then such officer(s) shall continue to receive the paramedic stipend in such dollar amount as received by such employee on February 1, 2007, so long as such employee maintains his paramedic certification in good standing and provides paramedic services as may be assigned from time to time by the Village. The Village will continue it[s] past practice of providing continuing education opportunities so that a police officer with paramedic certification on February 1, 2007 may continue such certification in good standing if he or she desires to do so.

Concur:

/s/ James Baird

_____

James Baird - Village Delegate

Dissent:

/s/ Gary Bailey

_____

Gary Bailey - Union Delegate

Dated: July 19, 2007

Edwin H. Benn
Neutral Chairman